DOCUMENT RESUME

ED 056 518 EM 009 376

TITLE	Proposed Ordinance for the Regulation of Cable Television. Working Draft.
INSTITUTION	Chicago City Council, Ill.
PUB DATE	1 Sep 71
NOTE	23p.
EDRS PRICE	MF-$0.65 HC-$3.29
DESCRIPTORS	*Cable Television; *Laws

ABSTRACT

A model ordinance is proposed for the regulation of cable television in the city of Chicago. It defines the language of the ordinance, sets forth the method of granting franchises, and describes the terms of the franchises. The duties of a commission to regulate cable television are listed and the method of selecting commission members is prescribed. "Freedom-of -information" as it applies to cable television is defined. (JY)

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PROPOSED ORDINANCE FOR THE REGULATION OF CABLE TELEVISION
(WORKING DRAFT - SEPTEMBER 1, 1971)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

Section 1: The Municipal Code of Chicago is hereby amended by adding the following Chapter to be known as Chapter 189.1, "Cable Television:"

Article I - Definitions

1.1 "Commission". "Commission" means the Chicago Cable Television Commission, appointed as hereinafter provided.

1.2 "Cablecast". "Cablecast" and "cablecast production" mean programs and all other video, voice and data material and services carried on cable system lines as supplied by producers.

1.3 "Cable System". "Cable system" means any facility constructed in whole or in part in, on, under or over any highway, road, street or other public place, and operated (a) to perform for hire the services of carrying the signals broadcast by one or more television stations; (b) to originate in and by its own facilities any signals; (c) to perform for hire or otherwise the services of carrying electronic signals of any type for any purpose; or (d) to distribute electronic signals by wire, cable, microwave, laser beam or other means to members of the public who subscribe to such service.

1.4 "Channel". "Channel" means, except where otherwise specified, a segment of spectrum which is sufficient megaHertz in width to accommodate one video and one coordinated audio signal, each at the highest quality the state of the art can produce. There shall also be channels of sufficient width to carry similarly high quality data communications and other channels of sufficient width to carry similarly high quality voice communications.

1.5 "Facility". "Facility" means all real property, antennae, poles, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used by a franchisee in providing service to its subscribers.

1.6 "Franchise Area". "Franchise area" means the specific geographic boundaries for which a franchise is granted by the commission.

1.7 "Franchisee". "Franchisee" means any person or organization which has been granted a franchise by the terms of this ordinance and which owns, controls, operates or manages a cable system under authority of that franchise and this ordinance. "Cable system" does not include the following activities by a telephone, telegraph, or electric utility regulated by the Illinois Commerce Commission:

(a) the leasing or renting to a franchisee of wires or cables for the redistribution of television signals to or toward subscribers of such franchisee; or

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(b) the providing to a franchisee of only communication channel service.

1.8 "Gross Receipts". "Gross Receipts" means all revenue derived directly or indirectly by a franchisee, its affiliates, subsidiaries, parents, and any person in which a franchisee has a financial interest, from or in connection with the operation of a cable system pursuant to this ordinance.

1.9 "Monitoring". "Monitoring" means observing a communication on a cable system where the observer is neither producer nor subscriber with respect to the particular communication in question. Observing a communication includes, but is not limited to, direct visual or auditory observation of a communication and observation, by means of electronic equipment, of the channel to which a terminal is tuned or observation as to whether or not a terminal is switched on.

1.10 "Pay Television". "Pay Television" means the delivery over a cable system of signals which are intelligible only to those subscribers who pay an extra fee, in addition to the ordinary periodic fee, on a per program or per channel or other subscription basis. Non-subscribers to Pay Television may receive a scrambled signal on the channels assigned to Pay Television material.

1.11 "Producer". "Producer" means a user while providing an input service for receipt by subscribers.

1.12 "Public Notice". "Publication" and "public notice" mean five consecutive entries in the radio and television sections of all daily and weekly newspapers of general circulation in the proposed or assigned franchise area.

1.13 "Register". "Register" means a monthly or more frequent publication by the Commission or the city government, the purpose of which is to make information public, in which information can be published in compliance with Article V of this ordinance, and which is readily available to all members of the public prior at a nominal price.

1.14 "Scrambled Signal". "Scrambled signal" means a signal which is in all respects like all other signals on a cable system except that it is carried on the system in such a form that only users who have paid for the signal will be able to obtain it.

1.15 "State of the Art". "State of the art" means the most advanced technology commercially available.

1.16 "Streets". "Streets" means all streets, highways, boulevards, alleys, concourses, and all viaducts in the City of Chicago and all property owned, controlled or leased by the City of Chicago.

1.17 "Subscriber". "Subscriber" means a user while receiving programs and other services made available by producers.

1.18 "User". "User" means a person who rents or leases a channel on a cable system for the purpose of becoming a producer, a subscriber, or both.

1.19 Singular and Masculine. Where appropriate, singular words include plural and masculine forms include feminine.

Article II - Grant of Franchise

2.1 Proposed Franchise. The provisional terms of each proposed franchise shall be published two months before public hearings are held thereon. The final terms of each proposed franchise shall be published no later than one month after the close of hearings. Each franchise shall comply with this ordinance, but provisions may be added which in no way conflict with or limit the effect of this ordinance.

2.2 Invitation of Bids. Bids for franchise shall be invited by publishing the final terms of the franchise.

2.3 Application. Bids shall be accepted for a period of two months after the published invitation of Section 2.2. Application and bid for a franchise shall include a bid in compliance with section 2.9, an ownership statement as described by section 3.18(b), and an affidavit and agreement of compliance with this ordinance.

2.4 Hearings. The Commission shall hold public hearings on all bids received. There shall be public notice one month prior to these hearings.

2.5 Award. All franchises shall be awarded within three months of the last day of public hearings. However, the Commission may, if all bids are unacceptable, call for new bids under the provisions of this Article.

2.6 Publication. Any franchise that is granted shall be published.

2.7 Area Hearings. All public hearings relating to a specific franchise area, including those held to consider the initial franchise grant, shall be held within the geographic limits of the designated area.

2.8 Responsibility of Franchisee. Before the award of a franchise, the Commission shall find that the proposed franchisee is financially and otherwise responsible and capable of performing the obligations imposed by this ordinance.

2.9 Lowest Bid. The award of any franchise by the Commission, shall be only to a complying applicant who offers the lowest producer access fee per channel, per minute of prime time (between 6 p.m. and 10 p.m.). The installation fee for subscribers shall be not more than $10.00 and the monthly subscriber fee shall be not more than $5.00.

2.10 Public Inspection. The Commission shall, at all times, permit any citizen to examine all applications and bids, accepted and rejected, and all correspondence and memoranda of any kind relating thereto. This obligation shall be regulated by the provisions of Article V.

2.11 Ownership of Franchisee. No elected or appointed government official of the United States of America or the State of Illinois or any subdivision of either of them shall own, directly or indirectly, any part of a franchisee, nor shall any elected or appointed government official serve as an officer, director, or employee of any franchisee. This section applies to all government officials, whether or not paid.

2.12 Ownership by Franchisee. No franchisee shall participate, directly or indirectly, in the revenues or profits from, or be a whole or partial owner of, or, if an individual, be an officer, director or employee of, any organization engaged in: (a) production, sale or repair of television sets or cable television equipments; (b) broadcast of over-the-air signals including microwave and lasers; (c) advertising; (d) publishing daily newspapers; (e) operating telephone credit services; (f) operating telegraph services; (g) operating any other cable system producer operating in Illinois; or (h) operating any commercial medium of data communication. No franchisee shall exercise any control over the content of a signal sent through its cable system.

2.13 Cross Ownership. No person owning or in any way controlling or benefiting from an interest in a cable system of 1% of more shall at the same time own, control or benefit from an interest of 1% or more in (a) ary organization engaged in the activities enumerated in Section 2.12, or (b) any other Chicago franchise.

2.14 Revision. Whenever any property of the franchisee reverts to the City of Chicago, the Commission shall transfer such property to a third party selected by it, and under terms approved by it, in the same manner as the original franchise was granted under this ordinance.

Article III - Terms of Franchise

3.1 Common Carrier. Each franchisee shall provide channel capacity in convenient time segments for cablecasting use by the public on a first-come, first-served common carrier basis. In no event shall minimum time segments be longer than five minutes.

3.2 Fees. Cable system fees not specifically fixed in this ordinance shall be established by the Commission by applying the standards and rules enumerated for the Illinois Commerce Commission in Sections 32, 33, 34, 35, 36, 37, and 41 of an Act Concerning Public Utilities Approved June 29, 1921, as amended. (Illinois Revised Statutes Chapter 111 2/3 Section 1-95) All fees for the lease or rental of studio or equipment for the purpose of cablecast production, cablecasting rates, channel lease and rental fees, signal-sending rates, and all subscriber fees not specifically set by this ordinance shall be subject to the specific approval of the Commission. Cabelcasting rates for all cablecasting by producers who are not-for-profit corporations shall be not more than half the rate which applies to all other producers. The Commission may establish reduced fees on a uniform basis for hours or classifications of hours other than price time (6 p.m. to 10 p.m.), in order to encourage full use.

3.3 Free Time. Subject to reasonable rules and regulations by the Commission, each franchisee shall give five minutes per month of television channel time on his system free of charge to any individual producer who resides in the franchise area and is receiving from any governmental unit one or more of the following forms of assistance: welfare, relief, public aid, pension, social security, aid for dependent children, unemployment compensation. Such a producer shall in all other respects be treated as a not-for-profit corporation.

3.4 Additional Capacity. The Commission shall require a franchisee to install additional channel capacity whenever the demand to cablecast on a common carrier basis on a system creates a two week backlog of cablecasters between the hours of 6:00 p.m. and 10:00 p.m.

3.5 Equipment. Each franchisee shall provide for rent and lease all necessary studio and equipment facilities for live and taped cablecast production. Technical assistance shall be provided at no additional charge. Each franchisee shall retain equipment in his studio capable of play-back of all currently standard sizes and types of video tape, film and audio tape. No franchisee shall require the use of specified production equipment.

3.6 Non-discriminatory Fees. All fees shall be non-discriminatory, except as authorized by Section 3.2. There shall be no free service of any kind not specifically authorized herein. No franchisee shall connect service without making charge therefor.

3.7 Subscription Television. A franchisee shall offer cable service to producers who sell subscription television or other pay television services.

3.8 Service. No franchisee shall refuse cable system service to any person who requests reasonable service for any purpose, nor shall any franchisee refuse any person the right to cablecast or subscribe for posted rates for any purpose. A franchisee shall furnish any requested service, including repair and maintenance, within two business days.

3.9 Control of Content. No franchisee shall exercise any control over the content of any cablecast production or other production and shall in no way be liable therefor.

3.10 Combination Rates. Time on cable systems shall not be sold in combination with any other service or product, including time on another medium of communication or another cable system. No discount shall be given a buyer of time on a cable system on account of his prior or subsequent purchase of any other service or product.

3.11 Deposits. No franchisee shall request a deposit nor make any charge other than those specifically authorized by this ordinance or by the Commission. However, a franchisee shall bill subscribers for fees on behalf of producers who request that service and who provide services to subscribers through the cable system; and a franchisee may make a reasonable charge to the producer for this service, upon the approval of the Commission.

3.12 Terminals. Each franchisee shall make available for lease to all subscribers all terminal equipment which the state of the art makes available. However, any compatible terminal equipment may be attached to any system and the franchisee shall make freely available all information necessary to determine and produce compatibility.

3.13 Maintenance. Each franchisee shall provide all necessary maintenance service on its system free of additional charge to the subscribers, to the reasonable satisfaction of the subscribers. Each franchisee shall put and maintain all parts of the cable system in good condition at all times.

3.14 Interruptions. Whenever it is necessary to shut off or interrupt service for the purpose of making repairs, adjustments or installations, each franchisee shall do so at such time as will cause the least inconvenience to its customers; and unless such interruption is unforeseen and immediately necessary, it shall give reasonable notice thereof to its customers.

3.15 Physical Survey. At least annually, each franchisee shall conduct a complete physical survey of its plant and report fully thereon to the Commission. This survey shall include, but shall not be limited to, measures taken by electronic devices devised for the purpose. No monitoring shall be conducted except with the specific permission of the user whose terminal is monitored. At all reasonable times, the Commission shall have the right to inspect all parts of a franchisee's cable system.

3.16 Switch. Each franchisee shall make available a switch that will allow subscribers the option of disconnecting their television sets from franchisee's terminal and connecting their television sets to an antenna or other terminal of their choice.

3.17 Tax. Each franchisee shall pay quarterly a percent tax on gross revenues to the City of Chicago. Said tax shall be payable 30 days following the close of each calendar quarter.

3.18 Reports. (a) Each franchisee shall file with the Commission quarterly reports of gross revenues signed by a Certified Public Accountant and prepared in accordance with regulations of the Commission. Each franchisee shall also allow the Commission to audit all of its accounting and financial records upon reasonable notice; make available all of its plans, contract, and engineering, statistical, customer and service records relating to its system and to all other records required to be kept hereunder; and at all times maintain complete and accurate books of account, records of its business and operations, and all other records required by this ordinance. (b) Each franchisee shall file annually with the Commission an Ownership Report, indicating all persons who at any time during the preceding year did control or benefit from an interest in the franchise of 1% or more and all creditors, secured and unsecured, in excess of $1,000. The Report shall also include a period longer than two months, together with the reasons therefor. (c) Each franchisee shall also file annually with the Commission copies of all rules, regulations, terms and conditions which it has adopted for the conduct of its business.

3.19 Sale. (a) Each franchisee shall promptly notify the Commission of any proposed change in, or transfer of, or acquisition by any other party of, control of the franchisee. The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised. Each change, transfer, or acquisition of control of a franchisee shall make its franchise subject to cancellation unless and until the Commission shall have consented thereto. For the purpose of determining whether it shall consent to such change, transfer or acquisition of control, the Commission shall inquire into the qualifications of the prospective controlling party by public hearing announced by publication. It shall use the same standards as those used in selecting the original franchisee. (b) Upon the foreclosure or other judicial sale of all or a substantial part of a cable system, or upon the termination of any lease covering all or a substantial part of a system, an affected franchisee shall notify the Commission in writing of such fact, and such notification shall be treated as a notification that a change in control of the franchisee has taken place, and the provisions of the first paragraph of this section shall apply. (c) The Commission shall have the right to cancel a franchise immediately upon the appointment of a receiver or trustee to take over and conduct the business of the franchisee whether in receivership, reorganization, bankruptcy, or other action or proceedings unless:

(1) such receiver or trustee shall have fully complied with all the provisions of this ordinance and remedied all violations thereof; and,

(2) such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this ordinance.

This section shall apply also in all cases of foreclosure and insolvency.

3.20 Interconnections. Each franchisee shall interconnect its cable system with all other contiguous cable systems, and may interconnect with any other system or service, in such a way that subscribers can receive all channels of all interconnected systems at any time. Each system shall also interconnect with those networks and other systems which the Commission shall determine. However, nothing in this provision shall prohibit the charging to subscribers, on a time-used basis, of extra fees for cablecast channels received from non-contiguous systems.

3.21 Geographically Exclusive. Each franchise shall be geographically exclusive.

3.22 Review. The Commission shall review the performance of each of its franchisees at public hearings held no less frequently than triennially. All who wish to present evidence of any kind shall be heard at the hearings. At the conclusion of the hearings, the Commission shall extend the franchise until the next public hearing held under this section; and/or at the same time set a date for a public hearing under this section, to commence within one year; and/or revoke or cancel the franchise under the provisions of section 3.25 and 3.27.

3.23 Buildings. Each franchisee shall have the right and obligation to provide cable television service to any member of the public in any publicly or privately owned buildings which are in the franchisee's franchise area without paying a charge to the building owners. Any disputes between franchisee and any building owner shall be heard at and resolved by a public hearing by the Commission. Each franchisee shall report to the Commission any building owner who requests a payment from the franchisee before allowing the franchisee to install cable system service in the building owner's building or who otherwise refuses it free access.

3.24 Repair. Any damage caused to the property of building owners or users or any other person by the franchisee shall be repaired fully by the franchisee.

3.25 Revocation. A franchise shall be revoked or cancelled when the Commission determines, at a public hearing, that a franchisee has breached its franchise or these regulations in a manner which materially or substantially decreases its service to the public. A franchisee shall be given three months public notice by registered mail of a proposed public hearing pursuant to this section. If within

sixty days of such notice, compliance has not been effected and certified to the satisfaction of the Commission, a public hearing shall be held in the franchise area. The Commission may move for such a hearing on its own motion or, mandatorily, when presented with a written petition of 10% or more of a franchisee's users specifying the sections of the franchise or regulations allegedly violated. For the purpose of this section, "user" includes any user of the system within the previous six months. The finding of a public hearing held under this section may be revocation or a fine under the provisions of section 3.26 or both.

3.26 Fines. The Commission shall have nonexclusive authority, subject to review under the Administrative Review Act, to levy and impose fines and penalties for violation of this ordinance. The maximum fine which may be assessed against any franchisee is $500.00 per offence. Each day of which the offense occurs shall be deemed a separate offense.

A fine may be assessed for any violation of this ordinance or a franchise or a regulation or oder thereunder by order of a court after hearing, or after the Commission conducts a public hearing. Where revocation is not proposed and the Commission conducts a hearing, the franchisee shall be given two months notice of the alleged violation, date of public hearing, and amount of proposed fine. There shall be no extensions of time. Compliance subsequent to notice shall have no bearing on the determination of violation.

3.27 Arbitration. (a) If a franchise is revoked or it is not renewed, the franchise rights of the franchisee shall cease and determine and all facilities of the franchisee shall become the property of the City of Chicago. A panel of arbitrators shall determine the fair and reasonable value of the franchisee's depreciated investment plus interest from termination of the franchise to the date of the award. In no case shall the panel award compensation based in whole or in part upon the value of the franchise itself. All expenses to the City of Chicago resulting from the forfeiture shall be deducted from the award. The panel of arbitrators shall consist of three members: one chosen by the franchisee, one chosen by the Commission, and one chosen by both. The franchisee shall pay the salary of its arbitrator and half the salary of the arbitrator chosen by both; the Commission shall pay the salary of its arbitrator and half the salary of the arbitrator chosen by both. The arbitration panel shall conduct its business in public hearings. (b) However, should a franchise terminate hereunder, the franchisee shall, upon written request of the Commission, promptly remove all property owned by it and placed on a public right-of-way, other than property which the Commission may permit to be abandoned in place. In the event of any such removal, the franchisee shall restore the street or other area from which such property has been removed to a condition satisfactory to the City of Chicago. Property abandoned in place shall be abandoned in such manner as the Commission shall prescribe.

3.28 Questionnaire. Each franchisee shall provide, at least once a year, each of its users with a guestionnaire which shall be prescribed by the Commission and include all reasonable questions submitted therefor to the Commission by users. One month public notice of the compiling of the questionnaire shall be given all users by the Commission and by the franchisee, which may do so by mail. The users' answers to the questionnaire, as compiled by the Commission, shall be published within three months after the questionnaire is sent to users and the availability of the publication without charge shall be given public notice. One question of the questionnaire, at least, shall request evaluative comments from subscribers.

3.29 No Discrimination. No franchisee shall discriminate on the basis of sex, race, national origin, religion, creed or previous arrest or conviction in hiring and promoting employees. Each franchisee shall seek out and train employees so that minority groups are represented in its employee work force. Each franchisee shall file an affirmative action plan to this end annuall with the Commission. This plan shall include a report of persons employed, together with their positions and salaries, by categories listed in the first sentence of this section.

3.30 Collective Bargaining. To the extent that a franchisee's employer-employee relations are not preempted by Federal law, each franchisee shall be obligated by this ordinance to recognize and bargain with any representative body, union or association of employees which the employees by majority vote choose to have as their bargaining agent in an appropriate bargaining unit.

3.31 Complaints. All user and other complaints sent to a franchisee, including those forwarded by government agencies, shall be turned over to the Commission within 10 days of mailing, together with the franchisee's response thereto. All complaints to the Commission shall be forwarded to the appropriate franchisee and answered by each within 10 days of original mailing.

3.32 Response. Each franchisee shall file with the Commission a quarterly report of all complaints and trouble calls received, and shall include in that report a breakdown of the calls by category, the number of second or subsequent calls on the same complaint, and an aging of the period of time required to satisfy each complaint reported.

3.33 Local Signals. Each franchisee shall make available to subscribers the signals of every broadcast television station that delivers a Grade B signal to any section of the franchise area. Each franchisee shall make available to subscribers the signals of every broadcast radio station licensed by the Federal communications Commission as standard broadcast (AM) or frequency modulation (FM) service and which delivers a consistently usable signal to any section of the franchise area for at least six hours per twenty-four hour day.

3.34 Two-way Service. Each franchisee shall provide to each user, free of additional charge, bi-directional signal capability which shall include at least one channel able to carry data, voice and picture signals.

3.35 State of the Art. Each franchisee shall constantly upgrade its facilities, equipment, and service so that its system is as advanced as the current state of technology will allow. Each franchisee shall install additional channel capacity as required to keep channel capacity in excess of the demand therefor by producers. At all times, each cable system shall be no less advanced than any other system of comparable size, excepting only systems which are experimental, pilot or demonstration. The Commission shall order a franchisee to comply with this section in case of specific violations, which it may investigate upon complaint or on its own motion.

3.36 60 Channels. Initial channel capacity shall be no less than 60 channels of television width and broadcast quality. (NOTE: We believe 60 is a satisfactory figure because of the state of the art, and because of the present construction of a 64-channel system in Akron, Ohio.)

3.37 Neighborhood Channels. Each franchisee shall make possible on each cable system for a producer to rent or lease a channel which is available as part of the regular subscription service only within each ward as they exist on the date of the enactment of this ordinance. These ward circuits shall be available for lease to producers at a rate no more than half of that for a full-system channel. There shall be a sufficient number of ward channels to meet the reasonably forseeable demand therefor, as specified by Section 3.4. Where a ward overlaps two or more franchise areas, each cable system shall provide a ward channel for that part of the ward within its franchise area.

3.38 Addressed Meesages. Each franchisee shall make it possible on each system for a message to be delivered to specific subscribers as desired by producers, and not to others. This shall be accomplished on the private channels required by the next section, but shall not require an electronic key for unscrambling.

3.39 Private Channels. At least ten percent of the total channel capacity of each system, and more if the Commission determines that there is a demand for more, shall be set aside for private use and shall be protected against unauthorized reception, by means of the most advanced technology available for the purpose. Channels set aside in this manner may be priced at a higher rate to reflect only the amortized cost of the additional equipment necessary to provide the aforementioned privacy.

3.40 Adult Channels. At least ten percent of the total channel capacity of each system and more if the Commission determines that there is a demand for more, shall be provided with an electronic lock capable of withstanding the experiments of children designed to defeat the device. The "adult channels" protected in this manner shall be reserved by the franchisee for material it

deems unfit for children by reason of violence or tendency to obscenity. The backlog of access requests for time on the adult channels shall at all times be less than that for general channels, and adult channel capacity shall be increased if necessary to maintain that condition. The Commission shall set standards for the determination of material which shall be produced only on an adult channel. No proposed programming shall be prescreened. The Commission shall determine whether its standards have been violated in any particular instance. Any person aggrieved by any standards set or decision made by the Commission under this section may file a petition for review under the Administrative Review Act.

3.41 Termination. No franchisee shall enforce collection of any subscriber's fee which accrues beyond the date of termination fixed by a subscriber's written notice to the franchisee, nor shall franchisee charge any fee for permanent disconnection of service. Franchisee shall promptly remove all its facilities from the premises of a user upon the user's request in writing to do so.

3.42 Office. Each franchisee shall maintain an office within the franchise area open to the public during all customary business hours.

3.43 Studio. Each franchisee shall, within 12 months of the grant of a franchise, or before the initiation of any cablecast production service, whichever occurs first, establish at least one studio at which the franchisee can fulfill the requirements of sections 3.1, 3.4 and 3.34 of this Article.

3.44 Availability. Each franchisee shall initiate cablecasting and other production service within 12 months after the granting of the franchise, and shall make system connection available to all potential subscribers in its franchise area within 18 months of granting of the franchise.

3.45 Cable Tapping. It shall be unlawful to tap or monitor a system line without authorization from the parties whose communication might be overheard. The penalty for each violation of this section shall be a fine up to $500.00 or imprisonment up to six months or both.

3.46 Monitoring. No monitoring of any terminal connected to the system shall take place without specific written authorization by the user of the terminal in question on each occasion. In no event shall monitoring of any kind take place without a clearly visible light signal and clearly audible sound signal. The light shall be visible and the sound audible at a distance of at least thirty feet from the terminal at the time of monitoring.

3.47 Prevention. Each terminal shall be equipped with a switch by which the user can, upon notification by means of the aforementioned light and sound, prevent the monitoring of his terminal notwithstanding any prior agreement.

3.48 Bond. (a) A franchisee shall forfeit and abandon all rights and privileges conferred by this ordinance and its franchise shall be null and void, unless the franchisee shall, within ten days after the grant, file with the Commission its written unconditional acceptance of the rights and privileges thereby conferred and with the terms, conditions and restrictions thereby imposed. Concurrently therewith, franchisee shall also file with the Commission a faithful performance bond running to the City of Chicago with a responsible surety in the penal sum of $500,000 conditioned that the franchisee shall perform each term and condition required by this ordinance and by its franchise, and that, in case of any breach of condition of the bond, the amount thereof shall be recoverable from the principal and surety thereof by the City of Chicago for all damages proximately resulting from the failure of franchisee to perform any provision of these regulations. Franchisee shall maintain such bond in force throughout the term of its franchise and all renewals and extensions thereof.

(b) A franchisee shall not be liable for any loss caused by strikes, riots, fires, acts of God or other causes beyond the franchisee's control. Pro rata refunds shall be issued automatically to all users affected by an interruption in service from any cause, including those enumerated in this section.

(c) If a franchisee fails to pay any monies due under this ordinance within the time fixed therefor; or fails, after ten days notice, to pay any city taxes due and unpaid; or, fails, after ten days notice of such failure given by the Commission, to comply with any provision of this ordinance, the surety on the franchisee's bond shall be immediately liable for any such failure which is measurable in money. Within ten days of any such notice, an additional bond shall be given to the Commission to restore the total bond to $500,000. All bonds in compliance with this section shall be expressly made subject to the conditions of this ordinance.

(d) The rights reserved with respect to the amounts due under bonds are in addition to all other rights of the City of Chicago and the Commission whether reserved by this ordinance or authorized by law, and no action, proceeding or exercise of a right with respect to such bonds shall affect any other right the City of Chicago or the Commission may have.

3.49 Liability to Franchisee. Neither the City of Chicago, nor the Commission, its officers, or employees, shall be liable for any damage occurring to the property of a franchisee caused by employees of the Commission, in performance of their duties, nor be held liable for the interruption of cable service by actions of the Commission's employees in the performance of their duties, nor be held liable for the failure of the franchisee due to acts of God, to be able to perform normal cable service.

3.50 Plans. Each franchisee shall file with the Commission full and complete copies of all plans, maps and records showing the exact locations of all cable system equipment. Each franchisee shall also make available to the Commission any information requested. All plans shall be subject to the approval of the Commission.

3.51 Interference. When a franchisee shall construct, renew or replace facilities (other than minor routine replacements of appurtenances) located in streets, it shall do so only upon the express prior written authorization of Chicago and strictly in accordance with plans and specifications approved or prescribed in such authorization, and in any such construction, renewal or replacement, or in any repair or removal of such facilities, permit nothing to be done by it or by anyone acting for it which may impair or damage such streets or any property located therein, or which may interfere unreasonably with the use of such streets by other persons.

3.52 Removal. If, as and when required by law, ordinance or order of competent authority, within such reasonable time as therein shall be provided, the franchisee shall: (a) Temporarily or permanently remove, change or alter the position of any facilities in streets whenever Chicago shall decide that such removal, change or alteration is reasonably necessary to the construction, repair, maintenance or use of such streets or the location, construction, replacement or maintenance of other property therein; provided, however, that such construction, repair, maintenance or use of such streets or the location, construction, replacement or maintenance of other property therein shall be carried out so as reasonably to minimize the franchisee's expense in making the required removals, changes or alterations of the franchisee's facilites; and provided further, that nothing herein shall be deemed to affect any of the franchisee's legal rights to recover its cost of such removal, change or alteration in whole or in part from persons other than Chicago; (b) Replace any present or future overhead facilities located in streets with underground facilities, provided (1) each area within which such replacement is required shall comprise at least one city block in area; (2) not more than twenty-five percent (25%) of the city lots within such area shall be vacant property; (3) the owners of at least ninety percent (90%) of the occupied premises within such area shall consent in writing to such replacement; and (4) the total cost of replacements of overhead by underground facilities whether ordered pursuant to this section or not, shall not exceed $250,000 in any one calendar year.

3.53 Resurfacing. Each franchisee shall promptly restore any streets involved in any authorization issued pursuant to this section to as good condition as it was before the work was authorized or undertaken, or, at Chicago's option to the reasonable condition prescribed or specified in such authorization.

3.54 Indemnification. The franchisee shall indemnify Chicago, its officers, agents and employees against any and all liability:

(a) For loss or damage to property of franchisee, its officers, agents, employees, licensees and invitees in streets pursuant to this ordinance, or for injury to or death of any such employee, agent or licensee while in streets pursuant to this ordinance however arising;

(b) Arising directly or indirectly from any act or omission of franchisee or any person acting for it done or claimed to have been done by virtue of or pursuant to this ordinance or any right or license granted hereunder or any authorization, plan or specification approved, prescribed or issued pursuant hereto.

3.55 Utilities. No franchisee shall place any poles or other fixtures or equipment where they will interfere with the lines, fixtures, or equipment of any gas, electric, telephone, sewer, water, or other public utility. The location by the franchisee of its lines and equipment shall be in such manner as to not interfere with the usual travel on said streets, and use of the same by gas, electric, telephone, water sewer or other utility.

3.56 Trees. Whenever necessary for the installation of poles, cables, conduit, house connections, or other facilities, a franchisee may trim trees located on public property. Such trimming shall be done only in a manner approved by the Commissioner of Streets and Sanitation.

3.57 Poles. Each franchisee shall make use, as much as possible, of existing poles within the franchise area. When there is a choice of routes, the cables, wires, and other equipment contemplated by this franchise shall be attached to poles located in the alleys through the franchise area. All other holders of public license and franchises within each franchise area shall cooperate with a franchisee to allow it joint usage of their poles, pole line facilities, and conduits wherever possible and wherever such usage does not interfere with the normal operation of said poles, pole lines, and conduits so that the number of new or additional poles and conduits, constructed by a franchisee within a franchise area will be minimized. Such cooperation shall include the right of joint usage at reasonable rates and on reasonable terms. In the event of a lack of such cooperation or refusal to bargain in good faith, an aggrieved franchisee may petition the Commission to exercise eminent domain powers over the property in question and to thereby set a reasonable rental rate.

3.58 Building Moving. A franchisee shall temporarily move its wires to permit the moving of buildings, upon written request by the mover and payment or deposit of reasonable charges, which may be determined by the Commission.

3.59 Pole permits. A franchisee and any organization installing facilities under contract to a franchisee shall obtain a permit from the Commission for each pole, conduit, or other structure so erected. The permit application shall include a scale drawing showing the location and dimensions of the pole, conduit or structure to be erected.

3.60 Easements. Each franchisee shall be entitled to secure reasonable rights-of-way, easements, permits or agreements from any other persons or utilities that may be needed for any reasons. Certified copies of such rights-of-way, easements, permits or agreements shall be filed with the Commission within thirty days after they are executed.

3.61 Easement Agreements. None of the agreements named in the preceding section shall contain provisions relating to the content of the messages carried on the cable wires attached. The agreements shall contain no provisions other than those relating to engineering or construction problems necessary to be resolved.

3.62 Commission Review. If a franchise is unable to obtain permission from the City to erect structures or equipment, trim trees, or otherwise operate, franchisee may request the Commission to review its requests at public hearings and to enter appropriate orders of enforcement.

3.63 Completion. Subject to section 3.44, construction shall commence within six months of the granting of a franchise and shall be completed within two years of the commencement of construction. No time delays shall be excused unless prior petition is made to the Commission. The Commission shall grant extensions of time only where the fault is clearly beyond the control of the franchisee, using the standard described in section 3.48(b).

3.64 Progress Reports. During construction of the system and all major overhauls thereof, including upgrading ordered by the Commission the franchisee shall make progress reports to the Commission each three months.

3.65 Construction Standards. Each franchisee shall comply with all appropriate Federal and State rules, regulations and standards for the construction of utility plants.

3.66 Emergency Channel. The Commission may reserve for itself or another appropriate agency a public emergency channel to which subscribers would be instructed to turn, in the event of a public emergency, by announcements on all other channels of the system.

Article IV - Appointment of Commission and Duties of Commission

4.1 Duties. The Commission shall exercise the following functions, powers and duties:

(a) ascertain the qualifications and fitness of applicants for licenses by public hearings, examination of records and documents and otherwise;

(b) grant franchises to qualified applicants in such numbers (not less than 4) and areas as the Commission shall determine under this ordinance;

(c) conduct hearings on proceedings to revoke, suspend or refuse renewal of license and to revoke, suspend or refuse renewal of licenses and to revoke, suspend or refuse to renew such licenses.

4.2 Powers. The Commission shall:

(a) promulgate rules and regulations when and as required in the administration of this ordinance;

(b) develop technical guidelines, standards and minimums for the quality of equipment installed by franchisees, and update such standards at least annually on the basis of public hearings; however, in no event shall any technical standard be valid which disallows materials or equipment, supplied by a producer, merely because of tis low aesthetic quality, as for instance poor resolution of a picture;

(c) judge and regulate the service, safety and rates of cable television systems and franchisees;

(d) receive and act upon all subscriber, producer, user, and franchisee complaints and shall further report back to each complainant within 10 days following the original mailing of a complaint as to the disposition of each complaint;

(e) review and judge answers to annual franchisee questionnaires to determine whether franchisees are serving the interests and needs of users;

(f) consult with representatives of the cable television industry, its operators, suppliers, other agencies of the franchisor and agencies of the state and the United States of American, as well as other states and cities to promote the harmonious development of cable system and other telecommunications and to determine the current state of the art of cable system communications;

(g) perform all other duties of regulation of cable systems as public utilities and common carriers.

4.3 Appointment. The Commission shall consist of five members who shall be appointed in the following manner:

Members of the Commission shall be appointed by the Mayor with the approval of the City Council.
No member of the Commission shall be a city, state, or federal appointee, officer, or employee. No member of the Commission shall be an employee, consultant, member, officer, owner or shareholder of a franchisee.

The members of the Commission shall be appointed to serve respectively for the following terms; one for one year, one for two years, one for three years, one for four years, and one for five years, the successor to each member to serve for a term of five years. The members shall receive such compensation for their services as the City Council shall determine. The Mayor may remove any member for cause after a public hearing. Vacancies shall be filled for the unexpired term.

Article V - Freedom of Information

5.1 Public Information. The Commission shall make available to the public information as follows:

(a) The Commission shall separately state and currently publish in a monthly or more frequent register, which register may be the City of Chicago Newsletter, for the guidance of the public--

(1) descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) rules of procedures, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(5) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the register and not so published. For the purposes of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the register when incorporated by reference therein with the approval of the publisher of the register.

(b) The Commission shall make available for public inspection and photostatic copying at cost --

(1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) those statements of policy and interpretations which have been adopted by the Commission and are not published in the register; and

(3) administrative staff manuals and instructions to staff that affect any member of the public; unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly

unwarranted invasion of personal privacy, the Commission may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, this provision shall be applied only to protect personal privacy of individuals and in each case the justification for the deletion shall be explained fully in writing. The Commission also shall maintain and make available for public inspection and photostatic copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after the passage of this ordinance, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by the Commission only if --

(A) it has been indexed and either made available or published as provided by this paragraph; or

(B) the party affected has actual and timely notice of the terms thereof.

(C) Except with respect to the records made available under paragraphs (a) and (b) of this section, the Commission on any request for records which are identified to the best of the applicant's ability, made in accordance with published rules stating the time, place, fees to the extent authorized by ordinance, and procedure to be followed, shall make the records promptly available to any person. If the Commission fails promptly to grant an information request, a complaint may be filed in the Circuit Court of Cook County. The court may enjoin the Commission from withholding records and order the production of any records improperly withheld from the complainant. In such a case, the court shall determine the matter de novo, examining the records in camera if necessary and not contrary to the interests of national or state security. The burden is on the Commission to sustain its action. In the event of noncompliance with the order of the court, the court may punish for contempt the responsible employee.

(D) The Commission shall maintain and make available for public inspection a record of the final votes of each member in every proceeding.

5.2 Exclusions. This section does not apply to matters that are--

(a) trade secrets obtained from a person outside the Commission except where the reason for secrecy, through passage of time, through termination of business interests, or otherwise, no longer exists.

(b) Commercial or financial information obtained from a person outside the Commission, which is privileged or confidential under ordinance or law, except where the reason for secrecy, through the passage of time, the termination of business interest, or otherwise, no longer exists.

(c) Investigatory materials compiled for purposes of anticipated or current prosecutions of persons who have allegedly violated the law, which materials would never be available by law to a private litigant because of the interference with efficient law enforcement or the tendency to bring harm to persons outside the Commission.

(d) Records concerning a person's medical, physical or psychological condition, including but not limited to medical records, transcripts, graphs, memoranda, notes, reports, or charts, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

(e) Intra-Commission memoranda or letters dealing solely with matters of law or policy which have not been actually or effectively incorporated into determinative Commission action and which never would be available by law to a private party in litigation. This exemption does not include Commission self-evaluations.

5.3 Construe Narrowly. This Article does not authorize withholding of information or limit the unconditional availability of records to the public, except as specifically stated in this Article. Each exemption specified in section 5.2 is to be construed narrowly to exclude only such information as clearly comes within the exemption's specific underlying reasons for nondisclosure.

5.4 Franchisee. Each franchisee must make available, consistently with the terms of this Article, all information which is not in the files of the Commission, but to which any government agency has access provided by statute, rule or regulation, including this ordinance.

Article VI - Miscellaneous

6.1 Title. This ordinance shall be known as the Ordinance for the Regulation of Cable Television - Broadband Communications.

6.2 Mandatory. No cable system franchise shall be awarded without following the provisions of this ordinance.

6.3 Effective Date. This ordinance shall take effect upon passage and due publication.

6.4 Preemption. The provisions of this ordinance shall be construed to conform to all present and future requirements of the Federal Communications Commission, all acts of the Congress of the United States, and all acts and requirements of the State of Illinois.

6.5 Captions. The captions to sections and articles are inserted solely for information and shall not affect the meaning or interpretation of the ordinance.

6.6 Penalties. Any person or organization found guilty of violating, disobeying, omitting, neglecting, or refusing to comply with, or resisting or opposing the enforcement of, any of the provisions of this chapter, except when otherwise specifically provided, upon conviction thereof shall be punished by a fine of not less than one hundred dollars, not more than five hundred dollars, for each offense. A separate and distinct offense shall be regarded as committed each day on which such person or organization shall continue or permit any such violation, or failure to comply, to exist after notification thereof. In addition to such fines and penalties, the franchise of such person or organization, or of the offending franchisee, may be suspended or revoked, as herinbefore provided.

6.7 Violators. All persons causing, participating in, or permitting any violation, including officers of any franchisee, of any provision of this chapter shall be severally or jointly liable therefor and as such subject to the fines and penalties provided by this chapter.

6.8 Prosecution. Prosecutions under this chapter shall be instituted by the Commission and shall be prosecuted in the name of the city.

6.9 Severable. If any provision, clause, sentence, paragraph, section or part of this chapter, or application thereof to any person, firm, corporation or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter and the application of such provision to other persons, firms, corporations or circumstances, but shall be confined in its operation to the provision, clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered and to the person, firm, corporation or circumstance involved. It is hereby declared to be the legislative intent of the city council that this chapter would have been adopted had such invalid provision or provisions not been included.

6.10 Saving Clause. Any prosecution arising from a violation of any ordinance or part of ordinance repealed herein or hereby, whether expressly or by implication, which prosecution may be pending at the time this chapter becomes effective, or any prosecution which may be started within one year after the effective date of this chapter, in consequence of any violation of any ordinance or part of ordinance so repealed, which violation was committed previous to the effective date of this chapter, shall be tried and determined exactly as if such ordinance or part thereof had not been repealed.

Section 2: This ordinance shall take effect upon passage and due publication.